2005

Robert L. Youngblood v. Auto-Owners Insurance Company : Reply Brief

Utah Court of Appeals

Peter C. Collins; Peter C. Collins, L.L.C.; Attorney for Plaintiff-Respondent-Appellee Robert L. Youngblood, II.
Robert R. Wallace; Kirton and McConkie; Attorney for Defendant-Petitioner-Appellant Auto-Owners Insurance Company.

DOCKET NO. 20050400

IN THE UTAH COURT OF APPEALS

ROBERT L. YOUNGBLOOD, II, Plaintiff – Respondent – Appellee, v. AUTO-OWNERS INSURANCE COMPANY, a corporation, Defendant – Petitioner – Appellant.	REPLY BRIEF OF DEFENDANT – PETITIONER– APPELLANT, AUTO-OWNERS INSURANCE COMPANY Case No.: 20040184-CA

ON CERTIORARI TO THE COURT OF APPEALS – APPEAL FROM FINAL ORDER (SUMMARY JUDGMENT)
OF THE THIRD JUDICIAL DISTRICT COURT OF
THE SALT LAKE COUNTY, STATE OF UTAH
(HONORABLE WILLIAM B. BOHLING)

Robert R. Wallace (#3366)
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84145
Telephone: (801) 328-3600

Attorney for Defendant-Petitioner-Appellant
Auto-Owners Insurance Company

Peter C. Collins (#0700)
PETER C. COLLINS, L.L.C.
623 East 2100 South
Salt Lake City, Utah 84106
Telephone: (801) 467-1700

Attorney for Plaintiff-Respondent-Appellee
Robert L. Youngblood, II

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Peter C. Collins (#0700)
PETER C. COLLINS, L.L.C.
623 East 2100 South
Salt Lake City, Utah 84106
Telephone: (801) 467-1700

Attorney for Plaintiff-Respondent-Appellee
Robert L. Youngblood, II

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ARGUMENT

POINT I

PAROLE EVIDENCE SHOULD NOT BE USED TO EXPAND INSURANCE COVERAGE.

Mr. Youngblood, the injured plaintiff, argues that he has not "for the purpose of contract interpretation ever sought to inject parole evidence into this case." Youngblood Brief at 5. He also admits there is no ambiguity in the policy. Youngblood Brief at 7, n.3. See also Point II, below. However, the effect of his argument does inject parole evidence to create new contract terms unintended by the insurer, and contrary to the clear contract language. Mr. Youngblood argues that even though his company's insurance policy provided underinsured motorist coverage (UIM) for him as a motorist (See Auto Owner's Original Brief at 6-7), the policy should be expanded by use of parole evidence, to include him as a pedestrian. If parole evidence is used to inject new contract terms to expand coverage beyond that actually provided, the policy reasons behind restricting the use of parole evidence only to cases of ambiguity, and then only to explain or interpret the ambiguity, are violated. Oral statements after the fact by persons seeking money recoveries through more favorable, expansion of actual contract terms should not be allowed, with the limited exception where parole evidence could explain an ambiguity. And in insurance contracts, parole evidence is not even needed in the face of an ambiguity, because ambiguous language in an insurance policy will automatically be interpreted in favor of the insured and coverage.

Although Mr. Youngblood now asserts there is no ambiguity, he still attempts to employ parole evidence of vague statements by an independent sales agency's representative, to expand intended coverage to include coverage unintended by the insurer, which parole statements Mr. Youngblood personally felt were "lame" (Auto Owner's Original Brief at 4, para. 9), and which parole statements would allegedly create UIM coverage even when Mr. Youngblood is sitting at his desk (Auto Owner's Original Brief at 4, para. 10), or walking down the street (*Id.*). Such use of parole evidence would be violative of the parole evidence rule and principles underlying the rule.

POINT II

THE LANGUAGE OF THE POLICY AT ISSUE IS NOT ONLY ADMITTEDLY NOT AMBIGUOUS, BUT IS ALSO NOT DENSE AND REBARBATIVE, COMPLEX, OR CONFUSING AS MR. YOUNGBLOOD ALLEGES.

Mr. Youngblood quotes extensively from the case of *American Family Mut. Ins. Co.v. Jeffery,* 2000 U.S. Dist. LEXIS 12225 (S.D. Ind. 2000), apparently an unpublished opinion because no citation to the federal supplement digest (F. Supp.) is given. In that case, whether published or unpublished, the Court states that the policy there at issue was "dense, and rebarbative", and "complex." Youngblood's brief at 12. By contrast, Mr. Youngblood admits that the policy at issue is not ambiguous, but avers it is confusing: "although the policy language in question . . . is not, strictly speaking, ambiguous, it is . . . confusing." Youngblood's brief at pg. 7, n.3. Mr. Youngblood states that he "has never contended that the policy language at issue is ambiguous." Youngblood's brief at 5. Theoretically, perhaps, language could be complex and confusing, but not ambiguous.

However, the language in question is not dense, rebarbative, complex or confusing. See Auto Owner's original brief at 6-7 for the fairly simple clear language of the policy. Cases cited by Mr. Youngblood, which come to their conclusions because of the extremely complex, dense, and rebarbative language of other insurance policies not at consideration here, should not be relied upon in cases where policy language is clear, as in the case at bar.

POINT III

THIS COURT SHOULD DISTINGUISH WHAT IS MEANT BY AN INSURANCE COMPANY AGENT, AND REMAND THIS CASE FOR TRIAL ONLY IF THIS COURT HOLDS THAT ALLEGED ORAL, PRE-PURCHASE REPRESENTATIONS OF AN INDEPENDENT CONTRACTING COMPANY'S AGENT CAN BE USED TO EXPAND COVERAGE OF A WRITTEN POLICY ISSUED BY A SEPARATE INSURER.

In accepting certiorari, this Court stated that the issue was, "whether equitable estoppel may apply . . . where the scope of coverage is misstated by a company agent prior to the insured's purchase . . ." (emphasis added). In rendering its decision, this court should distinguish what is meant by "a company agent". Different consequences of the court's decision would be appropriate depending on what is meant by "a company agent".

Plaintiff appears to blur any distinction which this Court might make between an agent in the sense of a paid or salaried officer, agent or employee of an insurer, and what might be inartfully considered an agent in the sense of an employee of independent contracting sales agency, which sells the insurer's insurance, as is the case at bar. Mr. Youngblood appears to "lump" all people into one group and assume that the Court must

make a decision with respect to all in that group. See, for example, Youngblood's brief at Statement of Case, para. 8 ("Mr. Youngblood relied . . . in purchasing the subject policy . . . on representations of Auto Owner's agents . . ."); para. 10 ("Mr. Youngblood, in reliance on the said representations of Auto Owners' agents, did not . . ."); para. 11 (". . . Auto Owner's should, by virtue of its agent's statements . . ."); Argument, pg. 7 (". . . Mr. Youngblood's reliance on the agent's pre-policy purchase representations . . ."); pg. 7 (". . . [such as the instant statements by the Auto Owner's agent] . . ."); pg. 8 (". . . that Auto Owner's agent made specific pre-policy purchase representations . . ."); pg. 8 ("Mr. Youngblood . . . in his reliance on what his insurance company representative told him."); pg. 14 ("It . . . for a jury to determine whether Mr. Youngblood's reliance on the representation of Auto Owner's agent was reasonable.").

In deciding the issue before it, this Court could make several different decisions. As only some examples, this Court could decide: (1) that the written policy controls and alleged pre-purchase oral statements cannot expand coverage, the position argued by Auto Owners; or (2) that the written policy does not necessarily control if written representations are made by an actual agent of the insurer in the sense that the agent is an employee of the insurer, but not if she or he is an employee of an independent contracting sales agency; or (3) the same as (2), but with respect to oral representations; or (4) that the written policy does not necessarily control even if the insurance sales agent making alleged written representations, is an employee of an independent contractor sales agency as in the case at bar; or (5) the same as (4) but concerning oral representations; or (6) that the written policy controls unless there is actual fraud in the inducement.

Wherever the Court decides on such a continuum of potential decisions, or elsewhere, if this Court decides consistent with (1), (2) or (3) in the immediately preceding paragraph, then this case should not be remanded for trial, but the district court's summary judgment should be affirmed and the Court of Appeal's decision reversed. That is, if this Court decides that oral representations cannot expand the written coverage, or that only representations, either written or oral, of an actual agent/employee of an insurer, as opposed to an employee of an independent contracting sales agency, can be used to expand coverage, then this case should not be remanded for trial. The reason for that is because in the case at bar, the sales agent/agency making alleged representations was an agent of an independent contractor, Cottonwood Insurance. (Auto Owners Original Brief at pp. 3-4, paras. 6-13). Only if this Court determines that even oral representations of a sales agent as an agent of an independent contracting sales agency can be used to expand the written coverage provided by the actual insurer, should this case be remanded for trial, again because in the present case alleged oral representations were made by the independent contracting sales agency, Cottonwood Insurance (See Auto Owner's original brief at 3-5).

Not only with respect to the actual agents involved in this case, but also with respect to Mr. Youngblood's general arguments, he appears to lump all "agents" together, whereas this Court may well make a distinction between employee agents and independent contractor sales agents. See for example, Youngblood's brief at Summary of Argument, pg. 4 (". . . where the scope of coverage is misstated by company agent . . ."); Argument, pg. 5 (". . . should be held to honor the oral representations of their agents . .

."); pg. 5 (". . . insurance companies may be estopped to deny the affirmative representations of their agents."); pg. 6 (". . . to hold insurers to the promise of their agents."); pg. 8 (". . . regardless of statements of their agents . . ."); pg. 9 (". . . pro-coverage [sic] misrepresentations by sloppy and unscrupulous insurance company representatives, . . ."); pg. 9 (". . . the effect of oral representations of their agents . . ."); pg. 10, (quoting *Harr* ". . . where an insurer or its agent misrepresents . . ."); pg. 11, (quoting *American Family* ". . . when the insurer's agent makes oral representation . . ."); pg. 11, quoting *American Family* "The parties agreed that the agent had never mentioned the sprinkler . . ."); pg. 12 (quoting *American Family* ". . . the agent's oral representations at the time of sale can override the written terms . . ."); pg. 12 (" . . . including 'reasonable reliance upon an agent's representation'" . . .); pg. 13 " . . . overzealous, careless, and or unscrupulous insurance company's sales people . . .").

Auto Owners emphasizes that under the law of this State, a party should only be liable for that party's own fault. (See Auto Owner's original brief Point II). Even if this Court should rule that the pre-purchase oral representations could expand coverage, a position Auto Owners strongly disagrees with, at least this Court should only allow oral representations of the insurer's own employee/agents to so expand coverage and not that of agents of an independent contracting sales agency. It would be inequitable and contrary to fault principles in Utah for the written policy language and actual coverage to be expanded by representations of an independent contracting sales agency such as Cottonwood Insurance in the case at bar.

POINT IV

REASONABLE RELIANCE CAN BE A MATTER OF LAW.

In the present case, Mr. Youngblood argues that reasonable reliance, usually a question for the jury, should a jury question in this case. However, reasonable reliance can be determined as a matter of law. This Court should hold that where representations are not made by the insurer itself, but by an independent insurance sales agency, and the later clear written policy of the actual insurer is produced to the insured, the insured should have an obligation to read the policy, and any reliance on representations of some independent sales agency under such circumstances should not be reasonable, as a matter of law. An insured should determine that what he or she desired, was agreed to by the insurer, especially when they are dealing through an independent intermediary. This Court should hold that an insured has an obligation to read a policy such as the one at issue which is clear as a matter of law.[1]

POINT V

SOME OF THE FACTS SET OUT BY MR. YOUNGBLOOD ARE NOT RELEVANT AND SHOULD BE DISREGARDED

In its Statement of Case, Mr. Youngblood states that he "communicated with Auto Owners regarding his attempt to settle the claim . . ." (Brief at 3, para. 7), and that Mr. Youngblood relied ". . . in settling his claim . . . on representation of Auto Owner's agents . . ."). The issue before the Court is alleged pre-policy representations, not alleged

[1] Reliance on alleged statements of the independent representative is also unreasonable where Mr. Youngblood believes underinsured motorist coverage covers him when he is even sitting at this desk as he feels was mentioned to him in the same context as his walking down the street was mentioned. (Auto Owners' Original Brief at 4, para. 10.)

post-policy pre-settling representations, which are denied by Auto Owners, and which are not at issue.

POINT VI

ISSUES ON APPEAL SHOULD NOT BE DECIDED IN THE ABSTRACT WITHOUT REFERENCE TO THE SPECIFIC FACTS IN THE CASE AND CONTROVERSY BEFORE IT.

In his brief, Mr. Youngblood states that Auto Owner's has, "gone far a field from the issue . . ." and that there are "factual and legal contentions set forth in Auto Owner's Brief that are extraneous.". . . .Youngblood's brief at 1, n.1. Mr. Youngblood does not, however, state what factual and legal contentions are extraneous and far a field.

Any issue to be decided by an appellant court, is decided in the context of the facts and circumstances of the specific case and controversy before the Court. Cases in the appellate courts are not decided in a vacuum or in the abstract. Courts do not issue advisory opinions. In attempting to guess what facts and issues Mr. Youngblood feels are extraneous, Auto Owner's asserts that it is not extraneous that plaintiff did not plead equitable estoppel resulting allegedly from representations of an agent of Auto Owner's prior to the purchase of the insurance at issue. See Auto Owner's Original Brief at Point I.

CONCLUSION

The Summary Judgment granted by the District Court should be affirmed and the Court of Appeal's decision reversed. In the unlikely event that the Court finds that estoppel can be used to expand clear written coverage of an insurance policy, this case should not be remanded for trial, unless this Court decides that alleged representations of

an independent contracting sales agency can estop a separate insurer from asserting the clear terms and limits of its insurance policy.

DATED this 4th day of October 2005.

KIRTON & McCONKIE

ROBERT R. WALLACE
Attorney for Defendant – Petitioner –Appellant

#850046

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2005, I caused two true and correct copies of the foregoing REPLY BRIEF OF DEFENDANT-APPELLEE AUTO-OWNERS INSURANCE COMPANY to be mailed to the following:

Peter C. Collins
623 East 2100 South
Salt Lake City, Utah 84106

Pamela Alexander